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Discussion on the theme "Tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration"

International expert group meeting on the theme "Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: the role of the Permanent Forum on Indigenous Issues and other indigenous-specific mechanisms (article 42)"

Note by the Secretariat

Summary

The international expert group meeting on the theme "Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: the role of the Permanent Forum on Indigenous Issues and other indigenous-specific mechanisms (article 42)" was held in New York from 25 to 27 January 2017. The present note contains the report of the meeting.

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Report of the international expert group meeting on the theme "Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: the role of the Permanent Forum on Indigenous Issues and other indigenous-specific mechanisms (article 42)"

I. Introduction

1. On 13 September 2007, by its resolution 61/295, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, marking a major victory for the world's indigenous peoples and an extraordinary achievement in international standard setting. As the tenth anniversary of the adoption of the United Nations Declaration approaches, on 13 September 2017, the international expert group meeting provided an opportunity to consider the complementary roles and impact of the following three indigenous-specific mechanisms on its implementation: the Permanent Forum on Indigenous Issues; the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples; and the Expert Mechanism of the Human Rights Council on the Rights of Indigenous Peoples.

2. The Permanent Forum on Indigenous Issues is a subsidiary body of the Economic and Social Council, established in 2000 by the Council in its resolution 2000/22, with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights. The Permanent Forum is tasked to: provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council; raise awareness and promote the integration and coordination of activities related to indigenous issues within the United Nations system; and prepare and disseminate information on indigenous issues.

3. The Expert Mechanism on the Rights of Indigenous Peoples was established in 2007 by the Human Rights Council in its resolution 6/36, with the mandate to provide the Council with thematic advice, in the form of studies and research on the rights of indigenous peoples, as directed by the Council. During the World Conference on Indigenous Peoples, held in September 2014, the General Assembly invited the Council to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples, with a view to modifying and improving the Expert Mechanism so that it could more effectively promote respect for the United Nations Declaration (resolution 69/2, para. 28). As follow-up, on 30 September 2016, the Human Rights Council decided to amend the mandate of the Expert Mechanism to provide the Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration, and assist Member States, upon request, to achieve the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples (Human Rights Council resolution 33/25, para. 1). Under the amended mandate, the Expert Group has the responsibility to: prepare an annual study on the status of the rights of indigenous peoples worldwide in the achievement of the ends of the Declaration; identify, disseminate and promote good practices and lessons learned; upon request, provide technical advice regarding the development of domestic legislation and

policies to Member States and indigenous peoples; provide Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms; and, upon the request of Member States, indigenous peoples and/or the private sector, engage and assist them by facilitating dialogue, when agreeable to all parties, in order to achieve the ends of the Declaration.

4. In 2001, the Commission on Human Rights established the position of Special Rapporteur on the rights of indigenous peoples as part of the system of thematic Special Procedures. The Special Rapporteur's mandate, as renewed by the Human Rights Council in 2010, includes the following responsibilities: (a) to examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples, in conformity with his/her mandate, and to identify, exchange and promote best practices; (b) to gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous peoples and their communities and organizations, on alleged violations of the rights of indigenous peoples; (c) to formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the rights of indigenous peoples; (d) to work in close cooperation and coordination with other special procedures and subsidiary organs of the Council, in particular with the Expert Mechanism on the Rights of Indigenous Peoples, relevant United Nations bodies, the treaty bodies and regional human rights organizations; (e) to work in close cooperation with the Permanent Forum on Indigenous Issues and to participate in its annual session; (f) to develop a regular cooperative dialogue with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies and programmes, as well as indigenous peoples, national human rights institutions, non-governmental organizations and other regional or subregional international institutions, including on possibilities for technical cooperation at the request of Governments; (g) to promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate; (h) to pay special attention to the human rights and fundamental freedoms of indigenous children and women, and to take into account a gender perspective in the performance of his/her mandate; (i) to consider relevant recommendations of the world conferences, summits and other United Nations meetings, as well as the recommendations, observations and conclusions of the treaty bodies on matters regarding his/her mandate; and (j) to submit a report on the implementation of his/her mandate to the Council in accordance with its annual programme of work (see Council resolution 15/14).

5. The mandates of both the Special Rapporteur and the Expert Mechanism call for close cooperation and coordination between the three mechanisms, while the Permanent Forum, owing to its earlier establishment in 2000, does not have an explicit reference to the other mechanisms or to the United Nations Declaration. The Permanent Forum is, however, tasked with promoting the integration and coordination of activities related to indigenous issues within the United Nations system, and referred to explicitly in article 42 of the United Nations Declaration, which states:

> "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration."

6. In recognition of the need to galvanize greater action for progress in implementing the United Nations Declaration, the General Assembly decided, by its resolution 65/198, to organize the World Conference on Indigenous Peoples in September 2014. The aim of the World Conference was to share perspectives and best practices on the realization of the rights of indigenous peoples, including to pursue the objectives of the United Nations Declaration. In the outcome document of the World Conference on Indigenous Peoples (General Assembly resolution 69/2), Member States reaffirmed their support for the United Nations Declaration and their solemn commitment to respect, promote and advance and in no way diminish the rights of indigenous peoples, and to uphold the principles of the Declaration. Member States also identified concrete steps and commitments they could take to achieve the ends of the Declaration, including at the national level.

II. Organization of work

7. At its annual session in May 2016, in recognition of the tenth anniversary of the United Nations Declaration in 2017, the Permanent Forum on Indigenous Issues recommended that the Economic and Social Council authorize the holding of a three-day expert group meeting on the theme: "Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: the role of the Permanent Forum on Indigenous Issues and other indigenous-specific mechanisms (article 42)". In July 2016, the Council decided to hold the expert group meeting (see Economic and Social Council decision 2016/250). In accordance with the decision of the Council, the meeting was organized from 25 to 27 January 2017 by the secretariat of the Permanent Forum. The programme of work for the meeting is contained in annex I to the present report.

8. The international expert group meeting was attended by members and representatives of the three indigenous specific mechanisms: the Permanent Forum on Indigenous Issues (Mariam Wallet Aboubakrine, Chair a.i., Aisa Mukabenova, Robert Leslie Malezer and Brian Keane); the Special Rapporteur on the rights of indigenous peoples (Victoria Tauli Corpuz); and the Expert Mechanism on the Rights of Indigenous Peoples (Albert K. Barume, Chair, and Alexey Tsykarev). The following seven experts from the indigenous sociocultural regions also participated in the meeting: Hindou Oumarou Ibrahim (Africa), Lars-Anders Baer (Arctic), Shankar Limbu (Asia), Max Ooft (Central and South America and the Caribbean), Anatolii Sleptcov (Eastern Europe, Russian Federation, Central Asia and Transcaucasia), Sheryl Lightfoot (North America) and Claire Charters (Pacific).

9. The international expert group meeting was also attended by observers from Member States and the specialized agencies, funds and programmes of the United Nations system, other intergovernmental organizations, indigenous peoples' organizations and non-governmental organizations. The list of participants is contained in annex II.

10. The participants had before them a programme of work and documents prepared by the seven regional experts. The documents for the expert group meeting are listed in annex III to the present report (the documentation is also available at: www.un.org/development/desa/indigenouspeoples/).

11. At the opening of the expert group meeting, the Director of the Division for Social Policy and Development, Department of Economic and Social Affairs, made a statement welcoming all participants to the meeting and highlighting that 2017, the tenth anniversary of the adoption of the United Nations Declaration, provided an opportunity to reflect on how the Declaration has influenced and motivated actions and strategies on indigenous peoples. Ms. Mariam Wallet Aboubakrine, Chair a.i. of the Permanent Forum, highlighted the importance of the United Nations Declaration and stressed that its implementation required resources and political will. Despite some progress in many different countries, the fact remains that indigenous peoples continue to suffer from discrimination, poor health and limited access to quality education while too often their land rights are not respected. The Chief of the secretariat of the Permanent Forum also welcomed the experts and participants, and outlined the objectives of the meeting, reiterating that its main aim was to ensure forward-looking and strategic actions to strengthen partnerships and cooperation in implementing the Declaration.

12. The international expert group meeting built on the deliberations and findings of previous meetings on the rights of indigenous peoples, including the 2009 expert group meeting on the role of the United Nations Permanent Forum on Indigenous Issues in the implementation of article 42 of the United Nations Declaration on the Rights of Indigenous Peoples (E/C.19/2009/2). Informed by the findings of that meeting, the Permanent Forum, at its eighth session in 2009, issued General Comments to determine the obligations of the Forum as laid down in article 42 and how the Forum could fulfil those obligations (E/2009/43, annex). In January 2015, another expert group met to discuss the theme "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples" (E/C.19/2015/8), which was organized to follow up on the September 2014 World Conference on Indigenous Peoples and to discuss strategies and approaches to strengthening implementation of the United Nations Declaration.

III. Overview of the discussions

A. Implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the global level

13. The meeting benefited from a wealth of examples of the situation pertaining to the rights of indigenous peoples around the world, including the presentation of a cross-national comparative study of indigenous rights compliance behaviour across 60 countries, each with significant indigenous populations, comparing each State's rhetorical and treaty commitments to international indigenous rights instruments with their actual legal, policy and constitutional conduct.[1]

[1] Sheryl Lightfoot, *Global Indigenous Politics: A subtle revolution*, Routledge, 2016.

14. Four countries (Australia, Canada, New Zealand and the United States of America) which had originally voted against the adoption of the United Nations Declaration in 2007 had subsequently changed their official positions to "support" or "endorsement" of the Declaration during 2009 and 2010. A pattern of selective endorsement was pointed out, since these endorsements included important qualifiers and exclusions as to how the Declaration should be interpreted in domestic law. A related concept of "over-compliance", whereby a Member State takes constitutional, legal and/or policy actions that recognize specific rights or a category of rights that go beyond that State's international human rights treaty obligations or its normative commitments, could also be applied to these four countries, all of which demonstrate moderate to strong levels of legal, constitutional and policy practices in the implementation of indigenous rights but are reluctant to make a high-level commitment to indigenous rights instruments.

15. There have also been a number of advances at the global level regarding multilateral negotiations. The active participation of indigenous peoples in the negotiation of the 2030 Agenda for Sustainable Development resulted in the inclusion of indigenous peoples' issues in the Sustainable Development Goals. Indigenous peoples from the seven sociocultural regions participated in that process, including at the high-level political forum on sustainable development. In climate change negotiations, indigenous peoples are also one of the nine major groups under the Economic and Social Council participating in discussions on the United Nation Framework Convention on Climate Change. The International Indigenous Peoples' Forum on Climate Change has been actively participating since 2008 in this process. Its work is organized in two streams: political and technical, and its achievements include: the recognition of the rights of indigenous peoples in the preamble to the Paris Agreement; the recognition of the importance of traditional knowledge for adaptation in article 7.5 of the Paris Agreement; and the creation of an indigenous peoples traditional knowledge sharing platform (see FCCC/CP/2015/10/Add.1, decision 1/CP.21, para. 135).

16. In the discussion that followed the presentations by experts participants highlighted the need to be careful about the question of language; the key role of the public sector in implementing the United Nations Declaration; how the increased presence of indigenous peoples in the public sector could be a catalyst for the implementation of the Declaration; and the fact that advances at global level, for example regarding the United Nations Framework Convention on Climate Change, could be attributed to the participation of indigenous peoples. The question of what gains countries may derive from complying with the United Nations Declaration was also discussed. In that regard, many participants stressed the benefits of the peaceful and just resolution of conflicts over resources, and the reputational benefits that respect for the rights of indigenous peoples had for the tourist sector, including the economic impact of improved health and education outcomes for indigenous peoples. The need to raise awareness and increase capacity at all levels of Government and also among United Nations country teams was underlined.

17. Regarding compliance assessment, participants questioned the one-size-fits-all approach in terms of assessing how Member States are implementing the United Nations Declaration. The possibilities that the new mandate of the Expert Mechanism on the Rights of Indigenous Peoples offers in terms of addressing the specificities of regions, supporting Member States and becoming an important space

for deliberations on indigenous peoples at the Human Rights Council were also mentioned. The need for experts to engage their respective regions, including both countries and regional organizations, was highlighted. Participants also agreed that the private sector plays a key role, inter alia, because investors have increasing leverage and influence at the country level. There was also broad consensus about the important role that national human rights institutions can play. Questionnaires sent to Member States and national human rights institutions were considered a useful tool. Participants also agreed that disaggregated data and statistics, in particular with regard to the Sustainable Development Goals, are crucial. The idea of an annual comprehensive report on indigenous peoples that might be useful to the three mechanisms, and also to treaty bodies and the universal periodic review, was suggested by the representative of one Member State.

B. Achievements and challenges to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the national level

18. In Africa, various States have undertaken measures to implement the United Nations Declaration at the national level through the adoption of domestic laws, legislation and policies. Good practices include the adoption by the Congo of Act No. 5-2011 on the Promotion and Protection of the Rights of Indigenous, the first such law in Africa and a ground-breaking milestone; the ratification, in 2010, by the Central African Republic of International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples (1989), the only country in Africa to do so; the recognition in the new Constitution of Kenya of the rights of "marginalized communities"; the official recognition of the Amazigh language and culture in the 2011 Constitution of Morocco; and the establishment by Chad of an institution to provide education and health services to nomadic children. Indigenous peoples' participation has led to the strengthening of indigenous peoples' organizations in many countries in Africa and at the regional level.

19. The United Nations Declaration is slowly but steadily influencing national legislation, including in the Russian Federation, where the main provisions of the Declaration are reflected in national legislation and in the decisions and actions of local governments. The Russian Federation is a multinational State, with distinct ethnic communities and indigenous peoples. According to the Constitution of the Russian Federation, protection of the rights of national minorities is under the joint jurisdiction of both the central Government and the regional governments. The right of indigenous peoples to maintain and develop various aspects of culture, as reflected, inter alia, in articles 5, 8, 11, 12, 15 and 31 of the United Nations Declaration, are also reflected in article 72 of the Constitution of the Russian Federation, which guarantees the protection of the natural environment and traditional way of life of small ethnic communities.

20. One important achievement of the Russian indigenous policy is that small-numbered indigenous peoples from the North are guaranteed legal protection and the ability: to lead their traditional ways of life; to preserve the unique culture and customs of their ancestors; to live nomadic and semi-nomadic ways of life, including to practice reindeer herding and fishing; and to choose their own destiny.

At the regional level, in Yakutia in 2010, a law "On ethnological expertise in the areas of traditional residence and traditional economic activities of peoples of the North of the Republic of Sakha (Yakutia)" was adopted. The primary mechanism of State support is the governmental subprogramme "Support of indigenous small-numbered peoples of the North", which is part of the broader State programme "Harmonization of interethnic relations in the Republic of Sakha (Yakutia) for (2012-2016)". In this regard, the government of Yakutia supports nomadic communities as a form of aboriginal self-governance in the Arctic. On 1 January 2017, local authorities identified 59 territories for traditional land management of the indigenous small-numbered peoples, of which 55 have already been registered in the State register of federal territories of traditional land use.

21. In the Asia region, recognition of indigenous peoples varies both in law and in practice. Examples of good practices are the landmark 1997 Indigenous Peoples Rights Act of the Philippines and the ratification of ILO Convention No. 169 by Nepal, the first country in the region to do so. There is also recognition of customary and representative institutions. For example, section 2 (c) of the above-mentioned Indigenous Peoples Rights Act states that the customary institutions are recognized, protected and respected by the State; in Indonesia, the constitution recognizes indigenous peoples as *masyarakat adat* or *masyaraka hokum adat*, while Act No. 27/2007 on agrarian reform and Act No. 32/2010 on the environment clearly use the term *masyarakat adat* (which is used by the indigenous peoples themselves); and in Sabah and Sarawak, Malaysia, the native court has jurisdiction over customary law and customs. Some countries have established dedicated institutions to work on indigenous peoples, such as National Foundation for the Development of Indigenous Nationalities in Nepal, and the National Commission on Indigenous Peoples of the Philippines. However, the recognition of lands, territories and resources is a fundamental factor that determines the exercise of other rights, including the right to life, security and liberty, and at present there are few countries that have laws (either constitutional or statutory) that recognize indigenous rights over lands and territories.

22. National human rights institutions have also applied the United Nations Declaration as a fundamental tool to monitor and evaluate the situation on the rights of indigenous peoples in Asia. In 2013, the Human Rights Commission of Malaysia commissioned a national inquiry into the land rights of indigenous peoples (*Orang Asli*) and published a comprehensive report. The Commission forged significant recommendations based on the United Nations Declaration, including on free, prior and informed consent. In 2014, the National Commission on Human Rights of Indonesia conducted the first national inquiry into the abuse of indigenous peoples land rights.[2] Regarding the legal status of the United Nations Declaration, section 9 of the 1991 Treaty Act of Nepal states that the provision of international law is equivalent to the provisions of national law, and that in the event of inconsistency international law should prevail. The United Nations at the country level can provide support to Member States and to indigenous peoples, especially in the context of the System-wide Action Plan on the Rights of Indigenous Peoples. It is important that indigenous peoples be involved in development of the United Nations

[2] Summary of the inquiry, see http://www.forestpeoples.org/sites/fpp/files/publication/2016/04/komnas-hamnationalinquiry-summary-apr2016.

Development Assistance Framework for their countries. Although there is an increase in the recognition and promotion of indigenous peoples rights compared to past practice, much more has to be done.

23. Discussions addressed a range of issues. Several participants pointed out that the United Nations Declaration was a good tool for the promotion of indigenous languages, and that the International Year of Indigenous Languages in 2019 would provide just such an opportunity. Participants also considered that the promotion of languages is related to a number of rights, including access to justice. The need for practical tools to support implementation was underlined, and the *Handbook for Parliamentarians*[3] was mentioned as a good example. Participants also considered it necessary to give more visibility to the progress made by those Member States that were taking concrete steps to implement the Declaration. Some Member States suggested using national voluntary presentations, as is done by the Commission on the Status of Women. Also highlighted was the role of both the national human rights institutions and the private sector in the implementation of the Declaration. The representatives of Australia, Canada, Chile, New Zealand and Paraguay explained how progress had been made in their countries in implementing the Declaration. Participants expressed concern about the trend to criminalize indigenous peoples' protests, and also stressed that when their rights are not recognized indigenous peoples needed to continue to advocate for them. The need to work at the local level to promote the implementation of the Declaration was also underscored. Particular reference was made to the importance of raising awareness and capacity-building for judicial and legal officials.

C. Achievements and challenges to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the regional level

24. There have been a number of achievements and challenges in the implementation of the United Nations Declaration in Latin America and the Caribbean. A number of factors have facilitated the implementation of the Declaration in the region, including: the relatively high proportion of indigenous people in Latin American countries; the clear identity of indigenous peoples in the region (there is no debate on who is indigenous and who is not); the fact that Governments across the region have supported their cause; strong peer-pressure from Governments; and the work of the regional human rights mechanisms, including the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights as autonomous organs of the Organization of American States. Furthermore, indigenous peoples in the region have historically had a high degree of organization, both at national and regional levels, and they have consistently demanded their rights, received the support of international donors and used legal means and mechanisms to promote their rights. Some of the important remaining challenges include: the limited political will and the difficulty in raising

[3] Inter-Parliamentary Union, *Handbook for Parliamentarians*, No. 23, "Implementing the United Nations Declaration on the Rights of Indigenous Peoples", Geneva, 2014 (http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/human_rights/Indigenous-Peoples-Parliamentarians-Handbook.html).

awareness among the general population regarding indigenous peoples' rights, in particular collective rights; conflicting interests, in particular regarding land ownership; limited capacity to develop advocacy strategies; difficulties entailed in pursuing legal processes; donors' agendas; the lack of international pressure regarding implementation; and the absence of a media strategy. As a way forward, a programmatic approach to designing and implementing a strategic programme with objectives, outcomes, outputs, timelines, a budget and monitoring and evaluation mechanisms would be useful.

25. In the Arctic region, through traditional use, the Sami people have established property rights to their lands and resources and property rights in terms of continuing to pursue their traditional livelihoods. The obligation of States to respect property rights on the basis of customary land tenure is grounded both in multilateral human rights treaties that are binding upon the Governments concerned, including the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, and in the United Nations Declaration on the Rights of Indigenous Peoples. In 2012 the Swedish Supreme Court delivered its ruling in the Nordmaling Case, a landmark case on Sami land rights. The Supreme Court based its ruling on what constitutes customary practices in reindeer husbandry. Under this approach, the Court found that the communities had established property rights to an extensive area of land. The ruling sets a precedent, as it indicates that Sami reindeer herding communities hold property rights to all the Sami traditional territory in Sweden.

26. In Finland, Norway and Sweden, Sami autonomy and self-government is implemented through the respective Sami Parliaments, and the Sami Parliaments are officially recognized in national legislation. The members of the Sami Parliaments are elected by the Sami in the respective countries. In order to strengthen their capacity to address cross-border issues affecting the Sami people, the three Sami Parliaments have established a joint cooperative body, the Sami Parliamentary Council. The members of the Parliamentary Council are appointed by the three Sami Parliaments from among the representatives elected to each through public elections held among the Sami communities in the respective countries. The Sami in the Russian Federation do not have their own publically recognized parliament, but they have been granted observer and participatory status in the Sami Parliamentary Council.

27. In their discussions on a number of issues regarding the implementation of the United Nations Declaration at the regional level, participants made the following specific points: (a) African States had participated actively in the debates that led to the adoption of the Declaration; (b) the African Commission on Human and Peoples' Rights had facilitated support for adoption of the Declaration among African States and continues to play a key role in its implementation; (c) other stakeholders can also play a key role in the implementation of the Declaration, including the regional commissions and regional organizations; and (d) it is necessary to provide space for greater sensitization and education about indigenous peoples rights. Strategic approaches to implementation will be required to facilitate targeted interventions tailored to the situation in different countries and regions.

28. Participants also highlighted the need to create synergies between regional organizations of indigenous peoples and to use regional frameworks and institutions

to promote increased implementation of the rights set out in the Declaration. Ten years after the adoption of the Declaration, it was considered necessary to identify the gaps in its implementation, establish a time line and build a multiyear plan to address those gaps. The Indigenous Peoples' Forum at the International Fund for Agricultural Development (IFAD) was mentioned as a good example of indigenous peoples' participation and inclusion within the context of an intergovernmental organization. The need to strategize regarding the contributions of the three indigenous-specific mechanisms to the transfer of best practices among regions was also highlighted.

D. Strategies to advance implementation of the United Nations Declaration on the Rights of Indigenous Peoples

29. A declaration is recognized within the United Nations as "a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected".[4] The United Nations Declaration on the Rights of Indigenous Peoples has become the standard against which State activities with regard to indigenous peoples are assessed at the national and international levels. It responds to historical discrimination against indigenous peoples, and exerts influence both internationally and domestically. Participants highlighted the legitimacy of the Declaration resulting from the consultative processes carried out over two decades, which ultimately resulted in its adoption. A concrete example of the use of the Declaration as an authoritative legal instrument is the Waitangi Tribunal hearing and decision, *Whaia Te Mana Motuhake*, In Pursuit of Mana Motuhake, the report on the Maori Community Development Act Claim relating to Maori rights to self-determination. The United Nations Declaration is the most widely supported and comprehensive legal instrument describing the rights of indigenous peoples.

30. One of the most effective ways to increase the legal and political impact of the United Nations Declaration is for indigenous peoples to use it in their legal and political advocacy. In doing so, indigenous advocates can compel States to interact with the Declaration in ways that may lead, over the longer term, to better cognizance and conformity with it, even in cases where the State rejects or qualifies those norms as non-binding. Such advocacy can enhance State interaction and, ultimately, compliance with international norms. Furthermore, a State's perception of diminished reputational costs associated with non-compliance with international norms can be a factor in its internalization of such norms.[5]

31. After the adoption of the United Nations Declaration, the mandate of the Special Rapporteur on the rights of indigenous peoples was expanded, and Human Rights Council resolution 15/14 includes, among those expanded mandated tasks, the promotion of the United Nations Declaration and international instruments relevant to the advancement of the rights of indigenous peoples.

[4] See E/3616/Rev.1, para. 105.

[5] See also Andrew T Guzman "Reputation and International Law" (2005-2006) 34 Ga J Int'l & Comp L 379 at 387.

32. Speaking at the expert group meeting, the Special Rapporteur underlined the remedial nature of the United Nations Declaration, which is aimed at repairing the ongoing consequences of historical denial of indigenous peoples' fundamental rights. As such, there is a need for Member States to translate the Declaration into concrete actions towards the implementation of indigenous peoples' rights. The Declaration is an essential tool for reconciliation. Remaining challenges to its implementation include problems related to competing interpretations of the rights enshrined in the Declaration, and the need to enhance participation of indigenous peoples in various intergovernmental processes. Another challenge is the fact that winning in court does not necessarily mean that rulings will be implemented. More exchange of knowledge and findings between the three mechanisms is needed. Academic institutions can be useful partners in this regard.

33. Participants highlighted that the reform of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples is a crucial opportunity for the three mechanisms to complement each other's work in responding to the needs at country level. The implementation of the Declaration will also be strengthened by collaboration between the three mechanisms with regional organizations, building on the work of the regional mechanisms and then linking it to the national level.

34. Participants considered that significant progress has been made over the last 10 years in strengthening the implementation of the Declaration by the entities of the United Nations system, and that there is a greater level of accountability at the international level. The System-wide Action Plan on the Rights of Indigenous Peoples is a key component of this process. Focus now has to be at the national level, and in this respect strengthening the capacity of indigenous peoples was considered paramount. It was also highlighted that the Sustainable Development Goals constitute a key entry point for the work on the implementation of the Declaration.

35. During the final session, discussions took place in three groups to discuss short-term, medium-term and long-term strategies to advance the implementation of the United Nations Declaration.

Short-term strategy for implementing the United Nations Declaration on the Rights of Indigenous Peoples

36. Participants highlighted the need for a programmatic approach, establishing priorities, goals, timelines and baselines. The System-wide Action Plan on the Rights of Indigenous Peoples and the Sustainable Development Goals should be the framework for this short-term (3-year) strategy. Some of the priorities of such a strategy could be: strengthening the capacity of indigenous peoples' organizations; establishing a "clearing house" mechanism to exchange lessons learned and replicate best practices; and increasing awareness through a media strategy. Over a three-year cycle the three mechanisms should focus their work on a limited number of issues and examine the implementation of the Declaration in a limited number of countries. It was also suggested that a concept note developing these proposals could be prepared in order to facilitate discussions during the sixteenth session of the Permanent Forum as well as for the use of the three mechanisms.

Medium-term strategy for implementing the United Nations Declaration on the Rights of Indigenous Peoples

37. Participants determined that a medium-term strategy for implementation should be formulated within the time frame of the 2030 Agenda for Sustainable Development. Elements of the strategy considered included: (a) the need to follow up on the Goals and targets that specifically mention indigenous peoples, in particular those regarding education and poverty, and also other Goals and targets of particular relevance for indigenous peoples; (b) the need for the three mechanisms to deliver joint messages; (c) the promotion of development from indigenous peoples' perspectives, also taking into account the situation of indigenous peoples in developed countries; and (d) development of a tripartite information gathering model with information from Member States, United Nations agencies and indigenous peoples. The need for adequate data on the socioeconomic situation of indigenous peoples, both in developed and developing countries, was highlighted. Participants considered that a medium-term strategy would also need to include continued awareness-raising on the relevance of accounting for the rights of indigenous peoples in the realization of the Sustainable Development Goals, as well as continued analysis on the impact of the Goals on indigenous peoples. In this respect, the concept note prepared by the secretariat of the Permanent Forum on the situation of indigenous peoples and the Sustainable Development Goals provided a good example.

Long-term strategy for implementing the United Nations Declaration on the Rights of Indigenous Peoples

38. Participants suggested that a long-term strategy would include the pursuit of increased visibility for the United Nations Declaration at the national level, and that all three mechanisms should contribute to such efforts. In that respect, the three mechanisms should engage as many ministries as possible. The need for data collection, and the particular need for a data collection focal point was highlighted. An analytical comment on each article of the Declaration could be developed and used for advocacy. It was considered that both qualitative and quantitative data were needed in order to assess implementation. It was important to produce literature clarifying aspects of the Declaration in relation with customary international law. Capacity-building for all sectors, including by indigenous peoples themselves, was also considered necessary, and it was suggested that the three mechanisms could also contribute to such efforts. Long-term education, at primary, secondary and university levels, was considered key. Maintaining a focus on core rights such as lands, territories and resources, self-determination and access to justice was also considered important. Participants considered that the three mechanisms should encourage United Nations entities to harmonize their policies regarding indigenous peoples. The model of the Indigenous Peoples' Forum at IFAD, which was a good example of support for indigenous self-determination within a United Nations agency, was highlighted. Furthermore, it was considered necessary to capture and divulge good practices, give positive and inspiring messages, engage with the private sector and raise the issue of its responsibilities regarding due diligence. Regarding data collection, the Indigenous Navigator, which provides a framework

and a set of tools for indigenous peoples to systematically monitor the level of recognition and implementation of their rights, was identified as good practice.[6]

IV. Conclusions and ways forward

39. Regarding the assessment of progress in the last 10 years, many of the presentations made the point that despite the immense challenges, there has undeniably been some progress in the implementation of the United Nations Declaration at the international, regional and national levels. The Declaration has been used in domestic and regional courts and the participation of indigenous peoples in political processes both at national and international levels has increased. The United Nations system is increasingly engaged in indigenous issues, including through the System-wide Action Plan on the Rights of Indigenous Peoples, the review of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, the follow-up to the World Conference on Indigenous People and the current consultations to enhance the participation of indigenous peoples at the United Nations. The main objective of the outcome document of the World Conference was to galvanize commitment and action. There has been some progress in this regard at the national and international level, including commitments to the development of national action plans.

40. Despite these encouraging developments, considerable challenges to the full implementation of the Declaration remain, most notably the need to translate the Declaration into national legislation for concrete progress for indigenous peoples' rights on the ground. For the United Nations and its indigenous-specific mechanisms, this means working through the agencies, funds and programmes of the United Nations to ensure that this implementation gap is addressed at the country level.

41. Participants identified the following as some of the reasons behind these difficulties in implementation: limited political will; a degree of fear and misunderstanding among States, the private sector and the general public of what indigenous peoples' rights entail, including the tendency to see indigenous peoples' rights as "zero sum game"; lack of awareness of the Declaration; competing interests in a context of lack of resources; fragmentation of international law; and measurements of progress that are not visible due to challenges relating to data and indicators.

42. A number of proposals were made during the discussions, including:

(a) Overarching strategies

- It is necessary to be wary of one-size-fits-all approaches to implementing the Declaration as the specificities of different contexts must be taken into consideration when devising strategies and policies;
- Implementation happens at all levels, and it is therefore necessary to look not just at the national level but also at the sub-national and community level, where the work of indigenous peoples themselves is crucial;

[6] Indigenous Navigator (www.indigenousnavigator.org/statistics/).

(b) United Nations mechanisms

- The three mechanisms can assist Member States better by: building on work already done; having clearly defined roles and focus; enhancing coordination and cooperation, not only logistically, but more importantly, substantively; and making sure that discussions at headquarters reach State institutions in capitals and the United Nations country teams;
- The three mechanisms can work with and support indigenous peoples and communities to protect their rights at the national level in a number of ways, including: supporting constitutional and legal reform; promoting the use of the Declaration in national and regional courts; and compiling and disseminating examples of court cases and jurisprudence;
- Even though it is an obligation of Member States to comply with the Declaration and other human rights standards, non-state actors, especially the private sector, also need to respect indigenous peoples' rights: in this regard, promoting the respect of indigenous peoples' rights by the private sector is crucial;
- It is necessary to develop an effective and coordinated communications strategy regarding indigenous peoples' rights;

(c) Partnerships and capacity-building

- It is necessary to promote capacity-building and partnerships with judicial systems and the legal profession, parliamentarians, national human rights institutions and the education sector: the three mechanisms have a role to play in these processes;
- Cooperation between United Nations mechanisms and regional bodies can be enhanced;
- There is a need to advocate for and ensure indigenous peoples' participation in broader global processes such as the United Nations Framework Convention on Climate Change and the Sustainable Development Goals;

(d) Development-based and pragmatic arguments for indigenous peoples' rights

- The Sustainable Development Goals must be used as entry point with Member States: this is a framework that Member States have agreed upon and that will guide development policies until 2030. The inclusion of indigenous peoples in the preparation and monitoring of implementation plans is an essential strategy for States to ensure that the Goals are achieved. Development processes that include indigenous peoples see more success across the board;
- It is necessary to highlight economic and pragmatic arguments to show Member States the benefits of implementing the Declaration, including that: the peaceful resolution of conflicts through negotiation costs less than the use of force; respect for indigenous peoples' rights can be a positive factor for the tourism sector; traditional knowledge and cultural and environmental conservation practices are beneficial for society as a whole; addressing the gaps in health and education, besides being the duty of Member States in order

to fulfil their human rights obligations, will contribute positively to development results; and respect for indigenous peoples' rights will prevent reputational risks;

(e) Data and indicators

- Data and indicators, which are essential to measure gaps and compliance and the well-being of indigenous peoples, can also be used to illustrate the contribution of indigenous peoples to common national goals.

43. Aisa Mukabenova, Vice-Chair of the Permanent Forum on Indigenous Issues, closed the meeting by thanking all participants for sharing their experiences and perspectives, as well as putting forward concrete suggestions to advance the implementation of the United Nations Declaration at the local, national, regional and global level. Ms. Mukabenova reiterated that the indigenous-specific mechanisms (the Permanent Forum, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples) will continue their efforts to strengthen the implementation of the United Nations Declaration.

Annex I

Programme of work

Date/time	*Programme*
Wednesday, 25 January 2017	
10 a.m.-1 p.m.	**Opening remarks**
	Daniela Bas, Director, Division for Social Policy and Development, Department of Economic and Social Affairs
	Mariam Wallet Aboubakrine, Acting Chair of the Permanent Forum on Indigenous Issues
	Implementation of the United Nations Declaration on the Rights of Indigenous Peoples
	Moderator: Chandra Roy-Henriksen, Chief, secretariat of the Permanent Forum on Indigenous Issues
	Presentations by:
	Sheryl Lightfoot
	Hindou Ibrahim Oumarou
	General discussion
3 p.m.-6 p.m.	**Implementation of the United Nations Declaration on the Rights of Indigenous Peoples** (*continued*)
	Moderator: Robert Leslie Malezer, Member, Permanent Forum on Indigenous Issues
	General discussion
Thursday, 26 January 2017	
10 a.m.-1 p.m.	**Achievements and challenges to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the national level**
	Moderator: Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples
	Presentations by:
	Anatolii Sleptcov
	Shankar Limbu

Date/time	*Programme*
3 p.m.-6 p.m.	**Achievements and challenges to the implementation of United Nations Declaration on the Rights of Indigenous Peoples at the national level** (*continued*) Moderator: Aisa Mukabenova, Vice-Chair, Permanent Forum on Indigenous Issues General discussion **Achievements and challenges to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the regional level** Moderator: Albert Barume, Chair, Expert Mechanism on the Rights of Indigenous Peoples Presentations by: Max Ooft Lars-Anders Baer General discussion
Friday, 27 January 2017	
10 a.m.-1 p.m.	**Strategies in advancing the United Nations Declaration on the Rights of Indigenous Peoples: the role of the three United Nations mechanisms related to indigenous peoples (Expert Mechanism on the Rights of Indigenous Peoples, Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples)** Moderator: Lars-Anders Baer Presentations by: Claire Charters Victoria Tauli Corpuz General discussion Strategies in advancing the United Nations Declaration on the Rights of Indigenous Peoples: the role of the three mechanisms related to indigenous peoples (Expert Mechanism on the Rights of Indigenous Peoples, Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples) (*continued*)

Date/time	*Programme*
	Participants will split into three groups to discuss short-term, medium-term and long-term strategies: • Group 1: How to develop a three/five year strategy for the implementation of the United Nations Declaration? • Group 2: How to develop a strategy to promote indigenous peoples' rights and participation in the framework of the 2030 Agenda? • Group 3: How to start thinking about a long-term strategy based on the United Nations Declaration?
3 p.m.-6 p.m.	**Presentation of the conclusions of the three groups** Moderator: Brian Keane, Member of the Permanent Forum on Indigenous Issues Closing remarks: Aisa Mukabenova, Vice-Chair, Permanent Forum on Indigenous Issues

Annex II

List of participants

Members of the Permanent Forum on Indigenous Issues

Mariam Wallet Aboubakrine, Chair a.i.
Aisa Mukabenova, Vice-Chair
Robert Leslie Malezer
Brian Keane

Members of United Nations mechanisms relevant to the rights of indigenous peoples

Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples
Albert Barume, Expert Mechanism on the Rights of Indigenous Peoples
Wilton Littlechild, Expert Mechanism on the Rights of Indigenous Peoples
Alexey Tsykarev, Expert Mechanism on the Rights of Indigenous Peoples

Invited experts

Hindou Oumarou Ibrahim (Africa)
Lars-Anders Baer (Arctic)
Shankar Limbu (Asia)
Max Ooft (Central and South America and the Caribbean)
Anatolii Sleptcov (Eastern Europe, Russian Federation, Central Asia and Transcaucasia)
Sheryl Lightfoot (North America)
Claire Charters (Pacific)

Member States

Australia
Brazil
Canada
Chile
China
Costa Rica
Ecuador
Finland
Guatemala
Honduras
India
Indonesia
Japan
Malta
Mexico

Myanmar
Panama
South Africa
United States of America
Holy See

United Nations system

International Fund for Agricultural Development
Office of the United Nations High Commissioner for Human Rights
United Nations Development Programme
United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)
Department of Public Information

Non-governmental organizations and academic institutions

Agencia Internacional de Prensa Indigena
American Indian Law Alliance
Americans and Kabyles for Liberty
Assembly of First Nations
Cultural Survival
Friends World Committee for Consultation (United Nations Office)
Georg-August-Universitaet Goettingen (University of Goettingen)
Grand Council of the Crees (Eeyou Istchee)
Habitat Pro Association
Haudenosaunee Confederacy: External Relations Committee
Indian Law Resource Center
Indigenous Peoples' Centre for Documentation, Research and Information
International Indian Treaty Council
International Native Tradition Interchange
The Mohegan Tribe
NGO Committee on the Rights of Indigenous Peoples
Southwest Native Cultures
University of Cambridge
University of Colorado
West Papua National Authority
World Indigenous Teaching and Learning Centre Circle

Annex III

List of documents

Concept note
Programme of work for the expert group meeting
Paper submitted by Hindou Oumarou Ibrahim
Paper submitted by Lars-Anders Baer
Paper submitted by Shankar Limbu
Paper submitted by Max Ooft
Paper submitted by Anatolii Sleptcov
Paper submitted by Sheryl Lightfoot
Paper submitted by Claire Charters

All of the above reports, including other documents submitted during the meeting, are available on the Indigenous Peoples website of the Division for Social Policy and Development of the Department of Economic and Social Affairs (https://www.un.org/development/desa/indigenouspeoples/).